

United States District Court District of Massachusetts

UNITED STATES OF AMERICA,

V.

MAGISTRATE JUDGE'S DOCKET
NO. 05M1043JGD

TYRONE BATTLE.

ORDER OF DETENTION PENDING TRIAL

COLLINGS, U.S.M.J.

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ____ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense)(state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ____ a crime of violence as defined in 18 U.S. C. §3156(a)(4).
 - ____ an offense for which the maximum sentence is life imprisonment or death.
 - ____ an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Enforcement Act.
 - ____ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ____ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ____ (3) A period of not more than five years has elapsed since the (date of

conviction)(release of the defendant from imprisonment) for the offense described in finding (1).

- ____ (4) Findings Nos (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonable assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ____ (1) There is probable cause to believe that the defendant has committed an offense.
 ____ for which a maximum term of imprisonment of ten years or more is prescribed in
 the Controlled Substances Act
 under 18 U.S.C. §924(c).
- ____ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the safety of the community.

Alternative Findings (B)

- X (1) There is a serious risk that the defendant will not appear.
- (2) There is a serious risk that the defendant will endanger the safety of another person or the community if released.

Part II - Written Statement of Reasons for Detention

Although there are conditions which could be set which would reasonably assure the defendant's appearance, there none which will reasonably assure the safety of other persons and the community. The defendant is only 24 but he has juvenile adjudications for (1) assault with a dangerous weapon for which he was committed to DYS custody (1997) and (2) armed robbery for which he was committed to DYS custody (1998). Also in 1998 he was adjudicated a delinquent on another charge of and assault with a dangerous weapon for he was placed on probation. As an adult, he has convictions of possession of a firearm and ammunition (1999) for which he received a year in jail. In 2001, he was convicted of possession with intent to distribute a Class B substance and possession of a Class D substance and was placed on probation. In 2001, he was convicted of knowingly receiving stolen property and was placed on probation. In 2002, he was again convicted of knowingly receiving stolen property and received a year in jail. He was on release on another charge of assault with a dangerous weapon when he is alleged to have committed the offenses charged in the instant case.

In the instant case, the defendant is charged with possession of a firearm and ammunition by a

convicted felon. While the defendant may have an argument as to whether the firearm meets the definition of a "firearm" under federal law, he has no defense against the charge of possession of ammunition by a convicted felon. He likely will be convicted.

The proffer of the grandmother as a 5third-party custodian is not sufficient; the defendant lived with his grandmother during all the years he assembled the criminal record recited, *supra*. It is manifest that she cannot control his penchant for committing criminal acts.

I find that there are no conditions of release or combination of conditions of release which will reasonably assure the safety of other persons and the community. I find that the facts which form the basis for this conclusion have been proven by clear and convincing evidence.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appear. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

Dated: February 23, 2005.